Supreme Court, U. S.
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No. 75-93

In the Supreme Court of the United States

OCTOBER TERM, 1975

TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, ET AL., APPELLANTS

v.

GLYNN REINE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

ROBERT H. BORK,
Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General,
Department of Justice,
Washington, D.C. 20530.

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v.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted pursuant to this Court's invitation of October 6, 1975.

QUESTIONS PRESENTED

1. Whether persons not alleging racial discrimination, who were required to resort to election procedures in Sorrento, Louisiana, which had not been precleared under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, had standing to enforce Section 5.

2. Whether the new election ordered by the district court was (a) barred by appellees' participation in the challenged election or (b) inappropriate under Section 5.

STATEMENT

Sorrento, Louisiana, is a small town with a voting population of 578 persons, 470 of whom are white and 108 of whom are black (J.S. App. 18). The town is governed by a five-member council; this case concerns the March 1973 election of that council.

From well before November 1, 1964, the five town councilmen had been elected on an at-large basis (*id.* at 19). On June 25, 1972 Louisiana's governor approved Act 106 (LSA–R.S. 18:309E (1976 Cum. Supp.)) which required that, after January 1, 1973, elections involving two or more seats of the same kind be held by division (J.S. 3; J.S. App. 19).[1] Because this enactment would alter the method of election, and because Louisiana is subject to the preclearance requirements of Section 5 of the Voting Rights Act, 79 Stat. 439, as amended, 42 U.S.C. 1973c (30 Fed. Reg. 9897), the Louisiana Attorney General on February 19, 1973, submitted Act 106 to the Attorney General of the United States for clearance under Section 5 (J.S. App. 19).[2]

On February 14, 1973, the legality of applying Act 106 to another Louisiana municipality was challenged on Section 5 grounds and, on February 16, 1973, the United States District Court for the Western District of Louisiana issued an opinion in *Lada* v. *The City Council of Lake Charles, Louisiana,* Civ.

[1] The statute is reprinted at J.S. 3. From the parties' description of the change contemplated by Act 106, it appears that each councilman was still to be elected on an at-large basis, but that, for the first time, each candidate was required to run for one of five specified posts (J.S. 7–8; Motion to Affirm 4).

[2] The letter of submission is dated February 15, 1973.

Action No. 18275, stating that, because the Section 5 review process with respect to Act 106 had not yet been completed, Act 106 "is hereby declared to be illegal and inapplicable to this election [in Lake Charles]" (App., *infra,* p. 6A).

Following the entry of that order, the Louisiana Secretary of State, who was responsible for the preparation of election ballots for the upcoming municipal elections, wrote to the State Attorney General for an opinion on the applicability of Act 106 in light of the *Lada* decision.[3] The State Attorney General responded two days later, issuing his opinion that Act 106 should not be applied to any of the upcoming municipal elections (J.S. App. 19; App., *infra,* pp. 3A–7A), and thereafter informed each municipal executive committee that Act 106 should not be applied to the elections to take place on March 24, 1973, and that election qualification procedures should be reopened to permit candidates to qualify for at-large elections (J.S. App. 19; App., *infra,* p. 9A).

On February 22, 1973, the Louisiana Attorney General, responding again to a letter from the Secretary of State, stated that all opinions of the state Attorney General are advisory only, and that if a municipality insists on holding elections pursuant to Act 106, it should be permitted to do so (J.S. App. 19; App., *infra,* pp. 11A–12A).

The Town of Sorrento Municipal Democratic Executive Committee thereafter notified the Louisiana

[3] A copy of this letter appears at pages 1A–2A of the Appendix to this brief.

Secretary of State that, as suggested by the Attorney General's opinion of February 22, the Town would not reopen qualifications for municipal offices, and requested that ballots should be printed in accordance with previous certifications for election by divisions (J.S. App. 19; App., *infra,* p. 13A). The Sorrento councilmanic election was held on March 24, 1973, under Act 106 (J.S. App. 19). Sorrento was the only one of the 63 municipalities holding elections that day which used the provisions of Act 106 (*ibid.*).

The complaint in this suit was filed on April 3, 1973. All plaintiffs (appellees here) are white voters in the Town of Sorrento, some of whom ran unsuccessfully for council seats in the 1973 election. Defendants (appellants here) are the Democratic Executive Committee and local officials responsible for the supervision of the March 24 election. Appellees' complaint alleged that the "division" plan, under which the election of March 24, 1973, was held, was a changed voting procedure which had not received federal pre-implementation review under Section 5 of the Voting Rights Act (Complaint, ¶11). Appellees requested the convening of a three-judge court, and sought a declaration that the election violated the Constitution and Section 5, and an injunction preventing further enforcement of the election results.

On April 20, 1973, shortly after the complaint in this case was filed, the Attorney General of the United States, by letter from the Assistant Attorney General for Civil Rights to the Louisiana Attorney General, objected to the implementation of Act 106 (J.S. App. 20; App., *infra,* pp. 15A–17A) and sent a copy of his

objection to the district court in this case. The letter states: "In our view the electoral system as modified by Act 106 significantly reduces the potential for minority candidates to win representation in multi-member offices in jurisdictions such as Louisiana where there has been a pattern of racial bloc voting" (App., *infra,* p. 15A).

A three-judge court was convened, and the case thereafter was submitted on cross-motions for summary judgment (J.S. App. 18). In an opinion (J.S. App. 17–21) issued on April 18, 1975, the district court held the election unlawful for failure of the municipality to secure federal review pursuant to Section 5 prior to implementing the changed voting procedure incorporated in Act 106 (*id.* at 20). The court further concluded that plaintiffs' participation in the election did not bar their challenging the election's validity (*ibid.*). It entered both declaratory and injunctive relief, ordering defendants to hold new elections within four months of the decree, either pursuant to the election plan in effect on November 1, 1964, or pursuant to a new plan submitted in compliance with Section 5 (J.S. App. 21).[4] An appeal to this court was noted by the defendants on May 16, 1975, and docketed on July 15, 1975.

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[4] Under this order, new elections should have been held no later than August 18, 1975. However, although no stay of this order was sought from the district court or this Court, we are advised by counsel for the parties that new elections have not been held. In the regular course, the next municipal elections for council seats in Sorrento would be held in March 1977. LSA–R.S. 33:383 (1976 Cum. Supp.).

ARGUMENT

The district court correctly held that appellees had standing to challenge the procedure used for municipal elections in the Town of Sorrento on March 24, 1973, and that they were not "estopped to contest the validity of this election by their participation in it" (J.S. App. 20).

1. Appellants do not challenge the district court's conclusion that the elections were held in violation of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.[5] Instead they characterize this violation as "a technical flaw in the process" (J.S. 5, 12), about which the appellees have no standing to complain because they are white. That contention misreads both the statute and this Court's decisions defining remedies thereunder.

[5] Section 5 provides that no person may be denied the right to vote pursuant to a voting procedure "different from that in force or effect on November 1, 1964," unless the United States District Court for the District of Columbia finds in a declaratory judgment action that the new procedure "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color," or, alternatively, upon submission of the proposal for review "the Attorney General has not interposed an objection within sixty days after such submission." 42 U.S.C. 1973c.

From well before November 1, 1964, councilmen in the town of Sorrento had been elected on an at-large basis. Thus, the "division" plan of election used in the 1973 election was a voting change subject to Section 5, and preclearance was necessary before implementation. That process had not been completed by March 24, 1973, and, accordingly, Act 106 had no legal effect on the date of the Sorrento election. See *Allen* v. *State Board of Elections*, 393 U.S. 544, 569–572; *Perkins* v. *Matthews*, 400 U.S. 379, 394–397; *Connor* v. *Waller*, 421 U.S. 656; *East Carroll Parish School Board* v. *Marshall*, No. 73–861, decided March 8, 1976, slip op. p. 3, n. 6.

The purpose of Section 5, of course, is to implement the Fifteenth Amendment's prohibition against racial discrimination in voting. *South Carolina* v. *Katzenbach,* 383 U.S. 301. But "[t]he Act was drafted to make the guarantees of the Fifteenth Amendment finally a reality for *all* citizens." *Allen* v. *State Board of Elections,* 393 U.S. 544, 556 (emphasis added). Although the Act does not explicitly authorize a private right of action to compel compliance by covered states and their subdivisions, it "does provide that '*no person* shall be denied the right to vote for failure to comply with [a new state enactment covered by, but not approved under, § 5].'" *Id.* at 555 (emphasis added). This language is not qualified, expressly or implicitly, by any racial limitation. It comprehensively covers persons of every race. Consequently, the private right of action created under Section 5 is not restricted to persons who are complaining that their political rights have been abridged on racial grounds. "The guarantee of § 5 that no person shall be denied the right to vote for failure to comply with an unapproved new enactment subject to § 5, might well prove an empty promise unless the private citizen were allowed to seek judicial enforcement of the prohibition." 393 U.S. at 557.

The remedy thus created is part of Congress' exercise under Section 2 of the Fifteenth Amendment of its "full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting." *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 326. In Section 5, Congress adopted "an unusual,

and in some aspects a severe, procedure" (*Allen* v. *State Board of Elections, supra,* 393 U.S. at 556), which provides for the suspension, *ab initio,* of any change in election procedures unless and until the new procedure is declared by the District Court for the District of Columbia to have no racially discriminatory purpose or effect, or the Attorney General fails, within 60 days after submission, to object to the procedure on those grounds (see n. 5, *supra*). To give effect to this preclearance requirement, Congress expressly provided for suits by the Attorney General (Section 12(d) and (e), 79 Stat. 443, as amended, 42 U.S.C. 1973j(d) and (e)), and implicitly provided—by Section 5's provision that "no person" could be required to resort to the suspended procedures—for private actions to enforce Section 5's requirements. *Allen* v. *State Board of Elections, supra.* The class of persons who benefit from Section 5, therefore, is not only those who suffer political discrimination on racial grounds, but any person within the covered jurisdiction who might otherwise be required to resort to the changed election procedures. Cf. *J. I. Case Co.* v. *Borak,* 377 U.S. 426.

In effect, Congress made each such person a potential private attorney general, by endowing him with standing to sue under Section 5 to determine whether newly adopted election procedures are subject to preclearance. The Act's ultimate purpose to enforce the Fifteenth Amendment is advanced as effectively by such private suits as it is when the Attorney General sues. Cf. *Trafficante* v. *Metropolitan Life Insurance*

Co., 409 U.S. 205, 211. The cause of action thus created meets both constitutional and prudential standing requirements, for as the Court recently noted in *Warth* v. *Seldin,* 422 U.S. 490, 501:

> Congress may grant an express right of action to persons who otherwise would be barred by prudential standing rules. Of course Art. III's requirement remains: the plaintiff still must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants. *E.g., United States* v. *SCRAP,* 412 U.S. 669 (1973). But so long as this requirement is satisfied, persons to whom Congress has granted a right of action, either expressly or by clear implication, may have standing to seek relief on the basis of the legal rights and interests of others, and, indeed, may invoke the general public interest in support of their claim. *E.g., Sierra Club* v. *Morton, supra,* at 737; *FCC* v. *Sanders Radio Station,* 309 U.S. 470, 477 (1940).

Appellants' contentions with respect to standing fail to recognize the important distinction between the substantive question whether the new procedures have a racially discriminatory purpose or effect, and the remedial question whether these procedures must be precleared. *Allen* v. *State Board of Elections, supra,* makes clear (393 U.S. at 555–556, n. 19) that the standing considerations bearing on the latter question are completely different from those bearing on the substantive issue. Compare *Trafficante* v. *Metropolitan Life Insurance Co., supra.* Only the remedial preclearance question under Section 5 is involved here. As to

that, racially discriminatory purpose and effect are irrelevant. It follows that appellees, as registered voters and candidates, were not required to allege that they were victims of racial discrimination in order to have standing to enforce Section 5.

2. The appellants further contend that appellees are estopped to contest the validity of the municipal election of March 24, 1973, because of their participation in it as candidates. The district court correctly rejected this contention on the basis of the Fifth Circuit's *en banc* decision in *Toney* v. *White,* 488 F. 2d 310. That decision reflects the considerations governing the setting aside of elections for violation of the Voting Rights Act established in *Perkins* v. *Matthews,* 400 U.S. 379, 396–397.

In *Toney,* a group of voters sued to set aside the results of a municipal primary election because a voting registrar had discriminated against black voters in purging the voting lists. The discrimination had occurred within thirty days prior to the election. A panel of the court of appeals affirmed the granting of prospective injunctive relief, but held that the circumstances did not warrant setting aside the election because the discrimination was not gross and the plaintiffs had not shown that they had no pre-election judicial remedy. 476 F. 2d 203, 209. The court *en banc,* however, concluded that the election should be set aside. It agreed with the panel that "the law imposes the duty on parties having grievances based on discriminatory practices to bring the grievances forward for pre-election adjudication. * * * [F]ailure to require prompt pre-election action in such circumstances as a prerequisite to post-election relief may permit, if not encourage, parties who could raise a claim 'to lay by and gamble upon receiving a favorable decision of the electorate' and then, upon losing, seek to undo the ballot results in a court action." 488 F. 2d at 314. Nevertheless, the court concluded that as between permitting misfeasance or nonfeasance by voting officials to frustrate the constitutional rights of black voters, and the requirement that those with grievances not await the outcome of elections, protection of the right to vote was paramount. It therefore held that election authorities have "a heavy burden * * * to show that there was a deliberate bypass of pre-election judicial relief" in order to avoid having the election set aside. 488 F. 2d at 315.

That standard, we submit, is as appropriate for patent evasions of the Voting Rights Act's preclearance requirements as it is for unconstitutional discrimination against black voters. Nor does it matter that those complaining are unsuccessful candidates who were overwhelmingly defeated in the invalid election. As we have shown above, Congress conferred standing to vindicate the policy of the Act upon "any person" forced to resort to uncleared procedures. A less stringent standard than clear and convincing proof of a deliberate bypass of a pre-election judicial remedy would, as the Fifth Circuit observed in *Toney,* hamstring the administration of the Act. 488 F. 2d at 315.

Appellants fell far short of such proof. With municipal elections but five weeks away, the State Attorney General advised on February 18, 1973, that the federal district court had declared Act 106 " 'to be illegal and inapplicable' " to the election in Lake Charles, Louisiana; that "it is my opinion" that this determination "should be applied * * * uniform[ly] to the 63 municipalities involved"; and that if "we proceeded with the 63 other elections under Act 106, we would run the risk of having these contests voided by subsequent court action" (App., *infra,* p. 6A). Upon learning that this opinion was only advisory, Sorrento opted to proceed under Act 106 on February 26, 1973, less than a month before the election. It was the only municipality to do so. For persons participating in the election the situation was obviously confused. The district court found that around February 2, 1973, two of the appellees filed a second set of papers to qualify for at-large elections under the old procedure, and a third town had chosen to ignore the district court's *Lake Charles* decision and the State Attorney General's advice, a pre-election suit might have compounded the confusion and damaged the candidacy of the complainants.

Given the importance to the statutory scheme of the rights sought to be vindicated, the district court's judgment was well within its discretion under the guidelines for new elections laid down in *Perkins* v. *Matthews, supra,* 400 U.S. at 396. The Court observed there that the "[f]ailure of affected governments to comply with the statutory requirement would nullify

the entire scheme," and that such governments "rather than citizens seeking to exercise their rights, bear the burden of delays in litigation" (*ibid.*).

Here, the changes were plainly invalid under Section 5 (see n. 5, *supra*). The town officials could be in no doubt that the procedures of Act 106 were ineffective until cleared under Section 5, and that the election could be set aside if conducted under Act 106. Under *Perkins,* the district court, which was "familiar with the nuances of the local situation" and "has heard the evidence in this case" (400 U.S. at 397) had the primary remedial responsibility, and correctly exercised it.[6]

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.
J. STANLEY POTTINGER,
Assistant Attorney General.

April 1976.

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[6] We note that an alternative form of relief also suggested in *Perkins*—providing "local officials an opportunity to seek federal approval" and requiring new elections only if they fail to do so or if federal approval is denied (400 U.S. at 396–397)—would be superfluous here. The Attorney General objected to Act 106 within a month after the election (App., *infra,* pp. 15A–17A), and local officials have clearly indicated that they will not voluntarily conduct new elections in Sorrento.

APPENDIX

STATE OF LOUISIANA,
SECRETARY OF STATE,
Baton Rouge, February 16, 1973.

Hon. WILLIAM J. GUSTE, Jr.,
Attorney General of Louisiana, State Capitol, 22d Floor, Baton Rouge, La.

DEAR MR. GUSTE: I am requesting your opinion relative to the effect of the case of Wilfred Lada et al vs. the City Council of the City of Lake Charles et al, decided yesterday by the Honorable Edwin F. Hunter, Judge, United States District Court for the Western District of Louisiana, Lake Charles Division.

Ballots for the primary election for the Lake Charles City Councilmen, which were involved in this suit, are now being prepared under the old laws in effect prior to the adoption of Act 106 of 1972 which was declared ineffective for the reason that it was not submitted to, and favorably acted upon, by the United States Department of Justice.

My questions are as follows:

In view of this decision in the case involving the City Council of Lake Charles, does this decision affect the ballot in the City of Lake Charles for municipal committeemen, and does the decision affect our procedures in printing ballots for the remaining 63 municipalities in the State of Louisiana in the case of candidates having previously qualified by "divisions" for party committees, councilmen or aldermen?

Time is of the essence because we have already commenced the printing of ballots for these elections last Monday, and each day's delay will reduce correspond-

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ingly the number of days available for voting by individuals in the United States Service voting by mail, and further delays could affect regular absentee voting in person and even eventually voting on voting machines.

Your reply at the earliest possible moment will be appreciated.

Yours very truly,

WADE O. MARTIN, JR.,
Secretary of State.

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
New Orleans, February 18, 1973.

HON. WADE O. MARTIN, JR.,
Secretary of State,
State Capitol Building,
Baton Rouge, La.

DEAR MR. MARTIN: I am in receipt of your request for an opinion regarding the recent decision of *Wilfred Lada, et al.* v. *City Council of the City of Lake Charles, Louisiana,* (Civil Action No. 18,275) rendered February 16, 1973 by United States District Judge Edwin F. Hunter, Jr., (Western District of Louisiana, Lake Charles Division) holding Act 106 of 1972 inapplicable to the election of City Councilmen in Lake Charles.

In your letter you specifically ask whether the decision in the *Lada Case* effects the ballots in the City of Lake Charles for municipal committeemen, and the ballots for the remaining 63 municipalities in the State of Louisiana in the case of candidates having previously qualified by court division for party committee, councilmen or aldermen.

LSA–R.S. 18:309E specifically provides that:

> E. Whenever in any district, parish, municipality or ward of the state there are two or more offices of the same kind of character to be filled from the same district, parish, municipality or ward, each candidate from the district, parish, municipality or ward, including candidates for membership on political party committees, shall be required to qualify

for and be a candidate for a division within the district, parish, municipality or ward. Within each such district, parish, municipality or ward there shall be as many divisions as there are positions to be filled. The committee before whom the candidate is required to qualify or the secretary of state, if the candidate is required to qualify before the secretary of state, shall assign a letter designation for each such division.

This Act shall become effective on and after January 1, 1973. Added by Acts 1972, No. 106, § 1, eff. Jan. 1, 1973.

There is no doubt that R.S. 18:309E as enacted in Act 106 of 1972, constitutes an alteration of voting qualifications and procedures within the meaning of Title 42 USCA section 1973c of the Federal Voting Rights Act which provides:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, such State or subdivision may institute an action in the United

States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

Hence, the inevitable concomitant was the judgment rendered in the *Lada Decision* declaring Act 106 of 1972 (R.S. 18:309E) illegal and inapplicable inasmuch as an action for declaratory judgment was not filed in the United States District Court for the District of Columbia, nor was approval granted by the Attorney General of the United States in accordance with the provisions of Title 42 USCA section

1973c. Accordingly, Title 42 USCA section 1973c preempts Act 106 of 1972.

As you know, the Act is under submission to the Attorney General of the United States and there is a very real possibility that the Civil Rights Division of the U.S. Department of Justice will not approve Act 106 of 1972. In any event, they will not act on the matter with sufficient promptness to enable city councils or other political subdivisions to await such action.

Therefore, it is the opinion of this office that Act 106 of 1972, (R.S. 18:309E) should not be applied with respect to any other election that might be held within the remaining 63 municipalities in the State of Louisiana or to the printing of the ballots pursuant thereto.

In conclusion, it is my opinion that paragraph 2 of Judge Hunter's order in the *Lada Case* should be applied to Lake Charles and uniformally to the 63 municipalities involved, as follows:

> 2. The candidates . . . in the Democratic Primary election to be held on March 24, 1973, shall run at large . . . and not by divisions as provided by Act 106 of the 1972 Session of the Louisiana Legislature, LSA–R.S. 18:309E which is hereby declared to be illegal and inapplicable to this election.

The reasons for taking this position are manifest. If, for example, we proceeded with the 63 other elections under Act 106, we would run the risk of having these contests voided by subsequent court action. Conversely, by maintaining the status quo prior to the enactment of Act 106, there is less risk of putting the outcome of any election contest under a cloud of doubt.

If we can be of any further assistance to you, please do not hesitate to contact this office.

Very truly yours,

WILLIAM J. GUSTE, JR.,
Attorney General.

Certified true copy:

KENNETH C. DEJEAN,
Chief, Civil Division,
Assistant Attorney General.

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
Baton Rouge, February 19, 1973.

TELEGRAM SENT TO: CHAIRMAN OR SECRETARY OF EACH MUNICIPAL EXECUTIVE COMMITTEE

On February 18, 1973, I issued an opinion to Honorable Wade O. Martin, Secretary of State, in regard to the applicability of Act 106 of 1972 to all elections to take place on March 24, 1973.

In light of the federal courts opinion rendered on February 16, 1973 in holding Act 106 illegal and inapplicable to Lake Charles, it was my opinion that the federal court order should be applied uniformly to the other 63 municipalities involved.

Therefore, you should re-open filing for all qualified persons including but not limited to those persons who have already filed as candidates who must re-file if they wish to be candidates. Filing is to be re-opened at 10:00 A.M. Wednesday, the 21st of February. Filing shall be closed at 5:00 P.M. on Friday, the 23rd of February.

Certification of the candidates filing for election should be sent to the Secretary of State immediately after the close of business Friday, that is, 5:00 P.M., February 23, 1973.

(Signed) WILLIAM J. GUSTE, JR.,
Attorney General.

Certified true copy:

KENNETH C. DEJEAN,
Chief, Civil Division,
Assistant Attorney General.

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
Baton Rouge, February 22, 1973.

Hon. WADE O. MARTIN, Jr.,
Secretary of State, State Capitol,
Baton Rouge, La.

DEAR MR. MARTIN: In answer to your letter of February 22, I understand that you have requested an opinion as a corollary to the Attorney General's opinion of February 18, in regard to *Wilfred Lada, et al* v. *City Council of the City of Lake Charles,* and its effect on Act 106 of 1972. The purpose of the opinion of February 18, in addition to answering the questions posed in your letter to the Attorney on the effect of Judge Hunter's decision in the latter case, was to establish uniformity.

As the Attorney General stated in his letter to you of February 18, page 3, "Therefore, it is the opinion of this office that Act 106 of 1972, (R. S. 18:309 E) should not be applied with respect to any other election that might be held within the remaining 63 municipalities in the State of Louisiana or to the printing of the ballots pursuant thereto."

In conclusion, the Attorney General stated in his letter of February 18, that the decision in the latter case should apply to Lake Charles and *"uniformly to the 63 municipalities involved."* (Emphasis supplied).

Therefore, in keeping with the intent of the Attorney General's opinion of February 18, to assure uniformity in the forthcoming primary to be held on March 24, the printing of the ballots should reflect that uniformity.

However, since all opinions of the Attorney General are only advisory, if a municipality insists on holding elections for at-large positions pursuant to Act 106 they should be permitted to do so.

Very truly yours,

WILLIAM J. GUSTE, Jr.,
Attorney General.

By KENDALL VICK,
Assistant Attorney General.

Certified true copy:

KENNETH C. DEJEAN,
Chief, Civil Division,
Assistant Attorney General.

FEBRUARY 26, 1973.

Re: Town of Sorrento, Democratic Primary Election—March 24, 1973.

Hon. WADE O. MARTIN, Jr.
Secretary of State,
State of Louisiana,
State Capital Building,
Baton Rouge, La.

DEAR SIR: This will advise you that the Democratic Executive Committee for the Town of Sorrento has decided not to re-open qualifications for municipal offices, as suggested by the Attorney General's opinion on this matter.

It is therefore respectfully requested that you print the Town of Sorrento ballot for the candidates previously certified by this committee, all in accordance with the supplemental opinion on this question rendered by the Attorney General on Thursday, February 22, 1973.

Thank you for your cooperation.

Yours very truly,

EMILE R. LAMBERT,
Chairman, Town of Sorrento,
Democratic Executive Committee.

DEPARTMENT OF JUSTICE,
Washington, D.C., April 20, 1973.

Hon. WILLIAM J. GUSTE, JR.,
Attorney General, State of Louisiana,
Department of Justice,
Baton Rouge, La.

DEAR MR. ATTORNEY GENERAL: This is in reference to Act 106 submitted by you to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. We received your submission on February 19, 1973. Act 106 provides for the use of divisions or numbered posts for all multi-member bodies in districts, parishes, municipalities, and wards in the state.

Our analysis of this matter reveals that Act 106 would impose a numbered-post requirement on present Louisiana election procedures for multi-member offices. In our view the electoral system as modified by Act 106 significantly reduces the potential for minority candidates to win representation in multi-member offices in jurisdictions such as Louisiana where there has been a pattern of racial bloc voting. The Attorney General has interposed objections under Section 5 of the Voting Rights Act to similar numbered-post systems in a number of other jurisdictions. We are accordingly unable to conclude, as we must under the Voting Rights Act, that implementation of 106 will not have a discriminatory racial effect and therefore I must, on behalf of the Attorney General, interpose an objection under Section 5. As the law provides, Act 106 may be brought before the District Court for

the District of Columbia notwithstanding this objection and may be implemented should that Court grant a declaratory judgment that the Act will have neither the purpose nor effect of discrimination on the basis of race.

While we accept and appreciate the fact that the legislative purpose in passing this statute was to simplify and expedite the election process, Section 5 requires us to examine the effect as well as the purpose of such changes. Should the legislature choose to make other revisions of this type we would be pleased to give the matter prompt consideration.

Inasmuch as the United States District Court for the Western District of Louisiana has deferred proceedings in *Lada* v. *City Council of Lake Charles* (CA No. 18,275) involving Act 106 until the Attorney General completed his review, and *Reine* v. *Town of Sorrento Municipal Democratic Committee* (CA No. 73–120), challenging an election held pursuant to Act 106, has been recently filed in the United States District Court for the Middle District of Louisiana, I am taking the liberty of furnishing a copy of this letter to both Courts. However, nothing contained herein should be construed in any way as addressing the constitutional issues pending before those Courts.

In view of your opinion of February 19, 1973, suspending the application of Act 106 to 63 municipal primaries held March 24, 1973, and the statement of Mr. Kenneth C. DeJean of your office in his telephone conversation with departmental attorney Joshua R. Treen on March 12, 1973, that the suspension would be effective through all runoffs necessitated by the results of the March 24 primaries, we would appreciate being notified whether you will extend the prohibition

on the use of Act 106 to any other election, including the municipal general elections to be held this year.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General,
Civil Rights Division.

Certified true copy:

KENNETH C. DEJEAN,
Chief, Civil Division,
Assistant Attorney General.

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